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## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

#### **49 CFR Part 571**

**[Docket No. NHTSA-2014-0073]**

**RIN 2127-AL27**

#### **Federal Motor Vehicle Safety Standards;**

#### **Lamps, Reflective Devices, and Associated Equipment**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** NHTSA is amending the side marker requirements contained in the Federal Motor Vehicle Safety Standard (FMVSS) on lamps, reflective devices and associated equipment for vehicles 80 inches or more in width and less than 30 feet long. This final rule adopts the amendments proposed in the Notice of Proposed Rulemaking (NPRM), published on December 4, 2012. These amendments will restore the side marker photometry requirements for motor vehicles under thirty feet in length that were in place prior to the 2007 final rule that reorganized the standard. Restoration of the side marker requirements will have no negative impact on safety or function and will allow motor vehicle manufacturers to avoid unnecessary modifications to their side marker lamps with no added safety or functional benefit.

**DATES: Effective Date:** [INSERT DATE **180 DAYS** AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. **Compliance Date:** Optional early compliance as discussed below.

**Petitions for Reconsideration:** Petitions for reconsideration of this final rule must be received not later than [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Any petitions for reconsideration should refer to the docket number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, West Building, Ground Floor, Docket Room W12-140, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:**

For technical issues: Mr. Wayne McKenzie, Office of Crash Avoidance Standards, NHTSA, 1200 New Jersey Avenue, SE, West Building, Washington, DC 20590 (Telephone: (202) 366-1729) (Fax: (202) 366-7002).

For legal issues: Mr. John Piazza, Office of the Chief Counsel, NHTSA, 1200 New Jersey Avenue, SE, West Building, Washington, DC 20590 (Telephone: (202) 366-2992) (Fax: (202) 366-3820).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Side marker lamps have been required by FMVSS No. 108 since it was promulgated as one of the initial Federal Motor Vehicles Safety Standards in 1967.<sup>1</sup> The main purpose of side marker lamps is to indicate the overall length of the vehicle. The photometric requirements are meant to ensure that the side marker lamps are sufficiently visible from a range of viewing angles. This final rule addresses an unintentional change NHTSA made to the photometric

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<sup>1</sup> See 32 FR 2408 (Feb. 3, 1967).

requirements for side marker lamps when it reorganized FMVSS No. 108 in 2007.<sup>2</sup> Before considering the changes made by this final rule, it is useful to briefly examine the evolution of the side marker requirements before 2007.

Relevant to the present rulemaking is a change that was made to the side marker requirements in 1980 in response to a petition for rulemaking from Chrysler Corporation.<sup>3</sup> At the time of the Chrysler petition, FMVSS No. 108 required that the photometric requirements for side marker lamps be met at test points 45 degrees outboard and inboard of the lateral center line passing through the lamps. FMVSS No. 108, however, permitted an additional compliance option for vehicles less than 80 inches in width. This additional compliance option had the effect of relaxing the inboard photometry requirements for the side marker lamps.<sup>4</sup> Chrysler – which wanted to use a common side marker design for its single-wheeled (less than 80 inches wide) and its dual-wheeled (greater than 80 inches wide) pickup trucks – petitioned to make this compliance option available to all vehicles regardless of width. NHTSA agreed with Chrysler that eligibility for the additional compliance option should not depend on a vehicle’s width, but did not agree that it should be available to all vehicles. The agency explained that the additional compliance option would not be appropriate for vehicles that are 30 feet or longer.<sup>5</sup> Accordingly, the 1980 final rule revised FMVSS No. 108 by deleting the words “80 inches in overall width” and substituting “30 feet in overall length.”

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<sup>2</sup> 72 FR 68234 (Dec. 4, 2007). The reorganized standard did not take effect until December 1, 2012. 76 FR 48009 (Aug. 8, 2011).

<sup>3</sup> 45 FR 45287 (July 3, 1980).

<sup>4</sup> Specifically, under this additional compliance option, the photometric requirements could be met for all inboard test points at a distance of 15 feet from the vehicle and on a vertical plane that is perpendicular to the longitudinal axis of the vehicle and located midway between the front and rear side marker lamps. This results in an angle of less than 45 degrees instead of the fixed 45 degrees that was otherwise required, so that the side marker lamp was effectively permitted to illuminate a smaller area than it otherwise would have been required to illuminate. See 45 FR 45287 (July 3, 1980) (citing 49 CFR 571.108, S4.1.1.8).

<sup>5</sup> This is because testing of side marker lamps is done at a distance of 15 feet perpendicular to the vehicle and at a 45 degree angle. At such a distance and angle, only a vehicle 30 feet long or under would have both of its side marker lamps visible.

The next change to the side marker requirements relevant to this final rule occurred in 2007, when NHTSA reorganized FMVSS No. 108. The reorganization was intended to streamline the regulatory text and clarify the standard's requirements. That final rule made the standard more user-friendly by significantly reducing the number of third-party documents, such as SAE<sup>6</sup> standards, incorporated by reference. Prior to the reorganization, FMVSS No.108 would, in many instances, specify requirements by simply referencing an SAE standard (which contained the requirements), instead of explicitly specifying those requirements in the text of FMVSS No. 108. However, when the standard was reorganized in 2007, requirements contained in the referenced third-party standards were included directly in the regulatory text, instead of incorporating the requirements by referencing the standard that contained those requirements. The agency explained that the reorganization was administrative in nature and that the FMVSS No. 108 requirements were not being increased, decreased, or substantively modified.

However, the newly revised version of FMVSS No. 108 inadvertently changed the alternative compliance option for side marker lamps. Prior to the reorganization, side marker lamps were required to conform to SAE Standard J592e (July 1972) (i.e., the requirements were specified using incorporation by reference). In addition, the pre-reorganization regulatory text also explicitly specified the alternative compliance option that was the subject of the 1980 final rule.<sup>7</sup> The side marker lamp requirements specified in SAE J592e (July 1972) also included (in a footnote) an alternative compliance option for vehicles less than 80 inches wide. This was the same compliance option for which the agency had deleted the words "80 inches in overall width"

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<sup>6</sup> The Society of Automotive Engineers (now SAE International). SAE is an organization that develops technical standards based on best practices.

<sup>7</sup> The 1980 final rule placed this requirement in S4.1.1.8. Due to subsequent amendments, at the time of the 2007 reorganization, the requirement was in S5.1.1.8.

and added the words “30 feet in overall length” in the 1980 final rule. When NHTSA reorganized FMVSS No. 108 in 2007, the requirements contained in SAE Standard J592e (July 1972) were included directly into the regulatory text of FMVSS No. 108, thus eliminating the incorporation by reference;<sup>8</sup> this included the width-based compliance option that we had deleted from FMVSS No. 108 in 1980. Accordingly, the 2007 reorganization specified the alternative compliance option that for each motor vehicle less than 30 feet in overall length and less than 2032 mm [80 inches] in overall width, the minimum photometric intensity requirements for a side marker lamp may be met for all inboard test points at a distance of 15 feet from the vehicle and on a vertical plane that is perpendicular to the longitudinal axis of the vehicle and located midway between the front and rear side marker lamps.<sup>9</sup>

Therefore, the agency inadvertently added back into FMVSS No. 108 the same width-based language it had deleted in 1980. This had the effect of substantively changing the side marker requirements by limiting the vehicles that were eligible for the additional compliance option. Before the reorganization, vehicles less than 30 feet long were eligible; after the rewrite, a vehicle had to be both less than 30 feet long and less than 80 inches wide. The agency did not cite within its analysis in the 2007 final rule the 1980 rulemaking that replaced the width criterion with the length criterion.<sup>10</sup>

## **II. 2012 Side Marker NPRM**

To address this change, NHTSA published a notice of proposed rulemaking (NPRM) on December 4, 2012.<sup>11</sup> As we explained in the NPRM, based on our communications with vehicle

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<sup>8</sup> The requirements were placed in a new table, Table X.

<sup>9</sup> See S7.4.13.2.

<sup>10</sup> The agency did receive comments to the NPRM to reorganize FMVSS No. 108 that stated that the agency’s proposal to add the width criterion to the side marker requirements was a substantive change to the side marker requirements. However, these comments did not cite the 1980 rulemaking that had deleted the width criterion.

<sup>11</sup> 77 FR 71752, Dec. 4, 2012.

manufacturers, a petition for rulemaking from the Alliance for Automobile Manufacturers, and our review of the 1980 final rule, NHTSA recognized that the 2007 rewrite erroneously added the width requirement back into the standard. This inadvertent change might have required manufacturers to perform costly redesigns in order to comply with the 2007 final rule.

Accordingly, the NPRM proposed to restore the pre-reorganization side marker requirements for vehicles that are 80 inches or more in width and less than 30 feet long. Considering the cost manufacturers would have to incur as a result of the modifications in the 2007 final rule, NHTSA announced in the 2012 NPRM that it would not pursue compliance actions against manufacturers that install side marker lamps on vehicles that are 80 inches or more in width and less than 30 feet long that fail to meet the 45 degree inboard photometric requirements of the 2007 final rule, provided that they meet the photometric requirements at a distance of 15 feet from the vehicle and on a vertical plane that is perpendicular to the longitudinal axis of the vehicle and located midway between the front and rear side marker lamps. NHTSA stated that this enforcement policy would be effective until the rulemaking was completed. That enforcement policy will end as of the effective date of this final rule.

### **III. Comments on the NPRM**

NHTSA received only three comments in response to the 2012 NPRM. The Alliance of Automobile Manufacturers (the “Alliance”) stated that it agrees with NHTSA’s analysis of the situation surrounding the changes to FMVSS No. 108 during the administrative reorganization process as well as the proposed revisions. The Alliance stated that the proposed changes would bring the side marker photometry requirements back in line with the original intent of the 1980 final rule and restore the requirements that were in force prior to the 2007 final rule. The Alliance also commented that the phrase “. . . and less than 80 inches (2m) in overall width”

should be deleted from footnote 1 of Table X to ensure there is no ambiguity concerning the application of side marker lamp inboard photometry requirements.

General Motors submitted a comment in support of the change to the proposal and stated that the proposed changes would restore the previous requirements and would have no overall effect on safety.

The European Commission submitted a comment requesting an extension of the comment period to February 5, 2013.

#### **IV. Agency Comment Analysis and Agency Decision**

NHTSA has carefully considered the comments submitted in this rulemaking. We have reviewed the comments received from GM and the Alliance and agree with the rationale presented. Having received no information to the contrary, we are amending S7.4.13.2 of FMVSS No. 108 to delete the phrase “and less than 2032 mm in overall width,” consistent with the proposal. This revision will restore the photometric requirements in FMVSS No. 108 for side marker lamps on vehicles less than 30 feet in length so that the requirements may be met for all inboard test points at a distance of 15 feet from the vehicle on a vertical plane that is perpendicular to the longitudinal axis of the vehicle and located midway between the front and rear side marker lamps, regardless of the width of the vehicle.

We have also decided to adopt the Alliance’s proposed revision to footnote 1 of Table X. The text in the footnote that the Alliance proposes to delete – “and less than 80 inches (2m) in overall width” – is essentially the same as the text we are deleting from S7.4.13.2. Similarly revising this footnote will make the requirements stated in the footnote consistent with the requirements stated in S7.4.13.2.

With respect to the comment from the European Commission, NHTSA chose not to extend the comment period formally because we stated in the NPRM that the agency would consider late comments to the extent practicable. Given that this final rule is being published several years after the NPRM and we did not receive any additional comments or requests to extend the comment period, we consider this comment resolved.

## **V. Effective Date**

In the NPRM we proposed an effective date of 30 days after publication of the final rule. Under the Safety Act, a FMVSS typically is not effective before the 180th day after the standard is published. We did not receive any comments concerning the proposed effective date. Therefore, in keeping with typical practice, this final rule will be effective [INSERT DATE 180 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], with optional early compliance. We believe that specifying a later effective date for this final rule will not have any adverse effects or prejudice regulated entities. Moreover, providing for optional early compliance will allow manufacturers to immediately benefit from the flexibility afforded by the revised side marker requirements the same as if the effective date were earlier. NHTSA's compliance policy stated in the 2012 NPRM is terminated as of the effective date of this final rule.

## **VI. Regulatory Notices and Analyses**

### **A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures**

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the DOT's regulatory policies and procedures. This final rule was not reviewed by the Office of Management and Budget (OMB) under E.O. 12866,



“Regulatory Planning and Review.” It is not considered to be significant under E.O. 12866 or the Department’s regulatory policies and procedures.

This final rule restores requirements to the standard that were unintentionally changed during the administrative revision of the standard. Because this final rule merely restores previously existing requirements it is not expected to have any costs. This final rule allows manufacturers to avoid the cost of redesigning the side marker lamps for dual-wheeled pickup trucks because these vehicles can now continue to meet the side marker photometry requirements for narrower vehicles. Because there are not any costs associated with this rulemaking and only minor benefits, we have not prepared a separate economic analysis for this rulemaking.

#### **B. Executive Order 13609: Promoting International Regulatory Cooperation**

The policy statement in section 1 of Executive Order 13609 provides, in part:

The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

NHTSA is not aware of any conflicting regulatory approach taken by a foreign government concerning the subject matter of this rulemaking.

#### **C. Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., NHTSA has evaluated the effects of this action on small entities. I hereby certify that this rule would not have a significant impact on a substantial number of small entities. The final rule would affect manufacturers of motor vehicle light equipment, but the entities that qualify as small businesses

would not be significantly affected by this rulemaking because the agency is restoring requirements that previously existed in an older version of the regulation. This rulemaking is not expected to affect the cost of manufacturing motor vehicle lighting equipment.

#### **D. Executive Order 13132**

NHTSA has examined this rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule would not have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: “When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.” 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision set forth above is subject to a savings clause under which “[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.” 49 U.S.C. 30103(e). Pursuant to this

provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved.

However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA's rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist - for example, when the standard at issue is both a minimum and a maximum standard - the State common law tort cause of action is impliedly preempted. See Geier v. American Honda Motor Co., 529 U.S. 861 (2000).

Pursuant to Executive Order 13132 and 12988, NHTSA has considered whether this rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (e.g., the language and structure of the regulatory text) and objectives of this rule and finds that this rule, like many NHTSA rules, prescribes only a minimum safety standard. As such, NHTSA does not intend that this rule preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by this rule. Establishment of a higher standard by means of

State tort law would not conflict with the minimum standard announced here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

#### **E. National Environmental Policy Act**

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

#### **F. Paperwork Reduction Act**

Under the procedures established by the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule would not establish any new information collection requirements.

#### **G. National Technology Transfer and Advancement Act**

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Public Law 104-113), “all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.” This final rule would not adopt or reference any new industry or consensus standards that were not already present in FMVSS No. 108.

#### **H. Civil Justice Reform**

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, “Civil Justice Reform” (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or

regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) specifies whether administrative proceedings are to be required before parties file suit in court; (6) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with these requirements.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this final rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

#### **I. Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with base year of 1995). This final rule would not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of \$100 million annually.

#### **J. Executive Order 13211**

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rulemaking that: (1) is determined to be economically significant as defined under E.O. 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rulemaking is not subject to E.O. 13211.

### **K. Regulation Identifier Number (RIN)**

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

### **L. Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

## **Regulatory Text**

### **List of Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Motor vehicles, Tires.

In consideration of the foregoing, NHTSA is amending 49 CFR part 571 as set forth below.

## **PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS**

1. The authority citation for part 571 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, 30166: delegation of authority at 49 CFR 1.95.

2. Section 571.108 is amended by revising paragraph S7.4.13.2 and footnote 1 of Table X to read as follows:

**§ 571.108      Standard No. 108; Lamps, reflective devices, and associated equipment.**

\*       \*       \*       \*       \*

S7.4.13.2 Inboard photometry. For each motor vehicle less than 30 feet in overall length, the minimum photometric intensity requirements for a side marker lamp may be met for all inboard test points at a distance of 15 feet from the vehicle and on a vertical plane that is perpendicular to the longitudinal axis of the vehicle and located midway between the front and rear side marker lamps.

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**Table X—Side Marker Lamp Photometry Requirements**

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<sup>(1)</sup> Where a side marker lamp installed on a motor vehicle less than 30 feet in overall length has the lateral angle nearest the other required side marker lamp on the same side of the vehicle reduced from 45° by design as specified by S7.4.13.2, the photometric intensity measurement may be met at the lesser angle.

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Issued in Washington, DC on February 1, 2016 under authority delegated in 49 CFR 1.95.

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Mark R. Rosekind,

Administrator.

Billing Code: 4910-59-P

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